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File No. Cr. A. DWR. 57

Legal DEPARTMENT Pt. II

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Subject. Criminal Appeals in the High Court of Bombay against the order of acquittal from Dharwar District.

P-6 R 7 (For previous pprs. pl. see Pt. I).

Cr. A. Dwr/57. Part. II

File No.

Std. Scott. Slip 24-B

II. 211-A

Judgment recorded by the High Court in Criminal Revisional Application No. 146 of 1951 (By State) in the case of State Vs. Nabisab Subansab Aragiddi, No. 1, and another.

The Government Pleader for th

Mr. N.M. Hungund, Advocate for the Accused.

Coram:- Chagla C.J. and Gajendragadkar, J.

4th July 1951.

Oral Judgment (Per Chagla, C.J.) :-

This is an application by the State for enhancement of sentence passed on accused Nos. 1 and 2 by the Sessions Judge, Dharwar. He convicted both of them under sec. 201 read with sec. 34 of the Indian Penal Code and sentenced Accused No. 1 to rigorous imprisonment for three years and accused No. 2 to rigorous imprisonment for one year.

The facts on which the prosecution relied were very simple. One Nijagunayya was in the service of accused No. 1 who had a tea shop. He left him 10 or 12 days before the 17th December 1949 and started serving another man by the name of Kashinath Miskin. It would appear that this Nijagunayya was cited as a wintess in a case where accused Nos. 1, 2 and 3 were charged with having assulted a police officer. He had already given his evidence and his evidence was to be further continued before the Magistrate on the 21st December 1949 which had been fixed as the date on which the case was again to be taken up. It appears that on the 17th December 1949 attempts were made by accused No. 2 to get this Nijagunayya to go to the house of accused No. 1 who is his brother, and ultimately accused No. 2 did succeed in taking this Nijagunayya to the house of accused No. 1, and the case for the prosecution was that in a room in the house of accused No. 1 this

Nijagunayya was done to death. Then his body was cancelled near the field of one Sangappa and Sangappa discovered the body and reported the matter to the police. The body was covered with a blanket and some fodder. Five accused were charged under section 302 and section 201 read with section 34. The learned Sessions Judge acquitted all the accused of charges under section 302, but convicted accused Nos. 1, 2 and 3 of offences under section ~~2~~201. The state appealed against the order of acquittal under section 302 in favour of accused Nos. 1 and 2. That appeal was dismissed by this Court. The State also applied in revision for enhancement of sentence against accused Nos.1 and 2 and this application has now come on before us.

Mr. Hungund who appears for the accused has attempted to argue that the order of conviction is not justified. But we have looked at the evidence and we are satisfied that the evidence is clear that the accused are certainly guilty of having committed an offence under section 201. There is evidence to show that Nijagunayya was seen last in the house of accused No. 1 and thereafter the next thing that was known about him was that his body was discovered by Sangappa and the matter reported to the police. In a room in the house of accused No. 1 which is described as God's room, blood was found on the ground as well as on various articles. The blanket with which the body was covered was also identified as belonging to accused No. 1. The prosecution also furnished a reasonable motive for the commission of the offence and that was the fact that the deceased had given evidence and was again to give evidence in a case which the police had filed against accused Nos. 1, 2 and 3. There was also the retracted confession of accused Nos. 4 and 5 which implicated accused No. 1. With regard to accused No. 2 he produced a shirt and a dhoti from the house of accused No. 1 where he is alleged to have been living and these

clothes also had blood marks on them. The confession of accused Nos. 4 and 5 also implicated accused No. 2. In view of this evidence the most that we can say is that the learned Sessions Judge took a very charitable view in convicting these accused of an offence under sec. 201 and acquitting them of the charge under section 302.

But when we come to the application for revision of the State for enhancement of sentence we cannot take into consideration the fact that these accused were also charged with murder. They have now been convicted only of having committed an offence under section 201, and the question is whether in exercising his discretion the learned Sessions Judge had acted in a manner which would call for interference at our hands. He has inflicted the sentence of three years against accused No. 1 and one year against accused No. 2. The Government Pleader says that accused No. 2 was as guilty as accused No. 1. He acted as a decoy, led the deceased to the house of his brother, and therefore there was no reason why distinction should have been made in inflicting sentences against the two accused. But obviously the Sessions Judge took into consideration that accused No. 2 was a young boy of 18 years of age and it was not necessary to punish him very severely. In any case he has already served his sentence and it would not be right for us to enhance the sentence and make him go back to prison. With regard to accused No. 1, three years is a fairly severe sentence. It may be that we might have taken a different view and might have passed a more severe sentence, but that is hardly a ground for interfering with the discretion exercised by the Sessions Judge.

The result is that the application fails and is dismissed.

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Judgment recorded by the High Court in Criminal Revisional Application No. 146 of 1951 (By State) in the case of State Vs. Habisab Subansab Aragiddi, No. 1, and another.

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Mr. N.M. Hungund, Advocate for the Accused.

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